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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-20377-2022

Date of decision : 12.05.2022

M/s Advance Webtech Private Limited and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Siddharth Gulati, Advocate for the petitioners.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of FIR No.693 dated 08.07.2018 registered under Section 174-A of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Ballabhgarh City, District Faridabad and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioners has submitted that in the present case, a complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as “the Act of 1881”) was filed against the present petitioners for dishonour of cheque dated 31.10.2017 amounting to Rs.2,50,000/- and it is in the said proceedings, that the petitioners were illegally declared as proclaimed persons vide order 02.07.2018 (Annexure

P-3) and direction was also given to the SHO concerned to register an FIR under Section 174-A of the IPC. It is further submitted that in the said complaint under Section 138 of the Act of 1881, the matter has been compromised and the complainant has withdrawn the complaint filed under Section 138 of the Act of 1881. It is further contended that the petitioner Nos.2 and 3 have even appeared in the proceedings under Section 174-A of the IPC and have been released on regular bail vide order dated 27.02.2019 (Annexure P-5). It is further argued that since the complaint under Section 138 of the Act of 1881 has already been withdrawn, thus, present FIR deserves to be quashed.

Notice of motion.

On advance notice, Mr. Munish Sharma, AAG, Haryana, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present petition. However, the factual issue raised by the learned counsel for the petitioner has not been disputed.

This Court has heard the learned counsel for the parties and has perused the paper book.

A co-ordinate Bench of this Court in ***CRM-M-43813-2018*** titled as “***Baldev Chand Bansal vs. State of Haryana and another***”, decided on 29.01.2019 has held as under:-

“Prayer in this petition is for quashing of FIR No.64 dated 15.02.2017 filed under Section 174-A of the Indian Penal Code registered at Police Station Sector-5, Panchkula and all other subsequent proceedings arising thereof as well as order dated 24.10.2016 passed by the trial Court vide

which a direction was issued to register the aforesaid FIR.

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*Learned counsel for the petitioner has relied upon the decisions rendered by this Court in “ **Vikas Sharma vs. Gurpreet Singh Kohli and another (supra)**, 2017, (3) L.A.R.584, **Microqual Techno Limited and others Vs. State of Haryana and another**, 2015 (32) RCR (Crl.) 790 and “**Rajneesh Khanna Vs. State of Haryana and another**” 2017(3) L.A.R. 555 wherein in an identical circumstance, this Court has held that since the main petition filed under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, therefore, continuation of proceedings under Section 174A of IPC shall be nothing but an abuse of the process of law.*

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In view of the same, I find merit in the present petition and accordingly, present petition is allowed and the impugned order dated 24.10.2016 passed by Judicial Magistrate, 1st Class, Panchkula as well as FIR No.64 dated 15.02.2017 registered under Section 174-A of the Indian Penal Code at Police Station Sector-5, Panchkula and all other subsequent proceedings arising thereof, are hereby quashed.”

A perusal of the above judgment would show that in a similar case where the FIR had been registered under Section 174-A of the IPC in view of the order passed in proceedings under Section 138 of the Act of 1881, while declaring the petitioner therein as proclaimed offender, a co-ordinate Bench after relying upon various judgments observed that once the main petition under Section 138 of the Act of 1881 stands withdrawn in view of an amicable settlement between the parties, the continuation of

proceedings under Section 174-A of the IPC is nothing but an abuse of the process of law. The said aspect was one of the main consideration for allowing the petition and setting aside the order declaring the petitioner therein as proclaimed person as well as quashing of the FIR under Section 174-A of the IPC.

Another co-ordinate Bench of this Court in a case titled as **“Ashok Madan vs. State of Haryana and another”** reported as **2020(4) RCR (Criminal) 87** has also held as under:-

“No doubt, the learned counsel for the respondent has vehemently argued that the offence under Section 174A I.P.C. is independent of the main case, therefore, merely because the main case has been dismissed for want of prosecution, the present petition cannot be allowed, however, keeping in view the fact that the present FIR was registered only on account of absence from the proceedings in the main case which had been subsequently regularised by the court while granting bail to the petitioner, the default stood condoned. In such circumstances, continuation of proceedings under Section 174A I.P.C. Shall be abuse of the process of court.

7. Accordingly, the petition is allowed. FIR No.446 dated 21.08.2017, registered under Section 174A I.P.C. At Police Station Kotwali, District Faridabad, as well as consequential proceedings shall stand quashed.”

A perusal of the relevant extract of the above judgment would show that where the main case was dismissed for want of prosecution, it was observed that the continuation of proceedings under Section 174-A of the IPC shall be an abuse of the process of court.

In the present case, a complaint under Section 138 of the Act of

1881 was filed on 16.12.2017 against the present petitioners and since the petitioners were declared proclaimed persons vide order 02.07.2018 (Annexure P-3) in the said proceedings, the direction was given to the SHO concerned to register an FIR under Section 174-A of the IPC and it is in pursuance of the said direction of the Judicial Magistrate Ist Class, Faridabad, the present FIR has been registered. A perusal of order dated 23.12.2021 (Annexure P-4) shows that the complainant has withdrawn the said complaint under Section 138 of the Act of 1881 on account of the fact that the matter has been compromised. The petitioner Nos.2 and 3 have also been granted regular bail vide order dated 27.02.2019 (Annexure P-5) in the proceedings under Section 174-A of the IPC. Since, the complaint under Section 138 of the Act of 1881 has already been withdrawn, thus, keeping the proceedings under Section 174-A of the IPC alive would be an abuse of process of law.

Keeping in view the abovesaid facts and circumstances, as well as the law laid down in the abovesaid judgments, the present petition is allowed and FIR No.693 dated 08.07.2018 registered under Section 174-A of the IPC at Police Station Ballabhgarh City, District Faridabad and all the subsequent proceedings arising therefrom are quashed/set aside.

12.05.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**